IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO.169 OF 2007

1. Shri Keshu Ramsay
   Maharaja Surajmal 'C' Block
   Ground floor, New Juhu Versova
   Link Road, Mumbai 400 053.

2. M/s DMS Films Pvt. Ltd.
   Through its Director
   Shri Keshu Ramsay
   with his office at
   Maharaja Surajmal 'C' Block
   Ground floor, New Juhu Versova
   Link Road, Mumbai 400 053. ... Applicants

versus

1. National Organization for
   Tobacco Eradication(NOTE)
   Through its General Secretary
   Dr. Shekhar Salkar
   with his office at
   1st Floor, Vaidhya Hospital
   near Market, Panaji, Goa.

2. State of Goa
   Through the Public Prosecutor
   Government of Goa
   Panaji, Goa. ... Respondents

Mr. Joseph Vaz, Advocate for the Applicants.

Mr. V. P. Thali, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 26TH JULY, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of both the parties.

2. The Applicants herein were Accused Nos.1 and 2 in C. C. No.OA/89/2006/D against whom process was issued by the learned J.M.F.C. by Order dated 17-11-2006 under Section 7 of the Goa Prohibition of Smoking and Spitting Act, 1997 and Section 5 of the Cigarettes and other Tobacco Products(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. However, the Applicants/A-1 and A-2 chose not to assail the said order issuing process against them but Accused Nos.4 and 5 filed separate revision petitions before the Court of Sessions challenging the said order issuing process against them which came to be disposed off by a common order dated 25-6-2007 of the learned Sessions Judge, Panaji.

3. The learned Sessions Judge has held that he had no jurisdiction to entertain the said revisions and therefore could not go into the merits of the same.

4. The Applicants who were Accused Nos.1 and 2 in the said Criminal Case have filed this petition invoking the provisions of Section 482 of the Code of

Criminal Procedure, 1973(Code, for short) against the said common order dated 25-6-2007 of the learned Sessions Judge.

5. At the hearing of this petition, Mr. V. P. Thali, the learned Counsel on behalf of the Respondent No.1 has taken a preliminary objection. According to Mr. Thali, the learned Counsel on behalf of the Respondent No.1, the Applicants who were Accused Nos.1 and 2 before the trial Court having not challenged the order dated 17-11-2006 issuing process against them, are precluded from challenging the order dated 25-6-2007 of the learned Sessions Judge and in support of this submission Mr. Thali has placed reliance on **Rajmata Vijaya Raje Schindia** v. **State of M.P. and others**((2003) 12 SCC 429) wherein the Apex Court has held that the quashing of the criminal complaint by the High Court in respect of those accused who had not approached it, was not justified. On this point, the learned Counsel Mr. Joseph Vaz has placed reliance on the case of **Ashok Chaturvedi and others** v. **Shitul H. Chanchani and another**((1998) 7 SCC 698) wherein the complaint was quashed against all the accused, even against those who had not invoked the jurisdiction of the Court under Section 482 of the Code since the allegations made in the complaint and the statement on oath of the complainant and his witnesses, taken on their face value did not make out any offence.

6. Admittedly, and as already stated, the learned Sessions Judge came to the conclusion that he had no jurisdiction to entertain a revision against an order issuing process, against the accused and therefore did not proceed to examine the said revisions on their merits. This Court in Criminal Miscellaneous Application No.52 of 2005 in the case of **Dr. Mohan N. Bhawe** v. **M/s. Travel Force and another** by Order dated 6-4-2005 has distinguished the case of **Adalat Prasad** v. **Rooplal Jindal**(2004(4) Mh.L.J. 274) and has come to the conclusion that:-

> "Again the revisional jurisdiction has been conferred concurrently on two courts namely the Court of Sessions as well as this Court. As held by me in the case of **Jeetendra R. Deshprabhu** v. **Laxmikant Yeshwant Parshekar and others**(Criminal Revision Application No.28/04) decided on 23.12.04 after considering several decisions of this Court, it is the choice of the superior court whether a revision petition should be entertained by it or not by allowing a party to by-pass the inferior court. I had also observed that it is unwritten law settled by the propriety, practice and prudence that a party ordinarily should approach the Court of Sessions first, in revisional jurisdiction".

7. Again, this Court in **Veer Chaphekar Nagari Sahakari Parsanstha Maryadit and others** v. **Tanaji Dinkar Wadkar and others** by

Judgment dated 8-6-2005 reported in (2005(2) Bom.C.R.(Cri.) 424) has held that the appropriate remedy against the order issuing process is by preferring a revision before the concerned Court of Sessions.

8. Considering the said two Judgments of this Court, it was incumbent upon the learned Sessions Judge to have disposed off the revision petitions on merits. From the view I have taken, it is really not necessary for me to decide whether the present petition at the behest of the Applicants/Accused who had not challenged the order issuing process against them is maintainable or not by invoking Section 482 of the Code.

9. In view of the above, the petition succeeds. The common order of the learned Sessions Judge dated 25-6-2007 is hereby set aside. The parties are hereby directed to remain present before the learned Sessions Judge on 7-8-2007 at 10.00 a.m. for further proceedings in the said revision petition. Needless to say parties in the said criminal case who are not before this Court will have to be notified before the said revision petitions are disposed off on merit.

N. A. BRITTO, J.

RD